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Attorney for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

ANTHONY ARLOTTA, III, Individually,
Plaintiff,

vs.

COALFIELD SERVICES, INC. a foreign
corporation; TERENCE NECESSARY AND
JANE DOE NECESSARY, husband and wife;
JOHN DOES I-X; JANE DOES I-X; BLACK
CORPORATIONS I-X; and WHITE
PARTNERSHIPS I-X,

Defendants.

Case No.: **CV2008-029775**
COMPLAINT

Tort – Motor Vehicle

Anthony Arlotta, III (hereinafter Plaintiff), for his complaint, alleges:

I

Plaintiff is, and was at all times material herein, a resident of the county of Maricopa, State of Arizona.

II

Defendant Coalfield Services, Inc. is a foreign corporation, authorized to do business within the County of Maricopa, State of Arizona.

III

Defendant Terrence Necessary and Jane Doe Necessary are, and were at all times material herein, husband and wife, and residents of the State of Virginia.

IV

At all times material herein, Terrence Necessary was acting individually, and for and on behalf of the marital community comprised of himself and Jane Doe Necessary, for which said marital community should be held liable to Plaintiff under applicable law. Further, the true name of Defendant Jane Doe Necessary is unknown, and Plaintiff will seek leave to amend this complaint once said Defendant's true name becomes known.

V

Defendants John Does and Jane Does I-X, and Black companies, partnerships, and White corporations I-X (hereafter fictitious defendants) are, and were at all times material herein, principals and/or employers for which Terrence Necessary was acting as an agent, servant, or employee within the scope of his agency or employment at the time of the accident alleged hereafter. As soon as their true names become known, Plaintiff will amend this Complaint. Said fictitious defendants should be held liable to Plaintiff for the actions of Terrence Necessary on the theories of respondeat superior, agency, equitable estoppel, or other applicable law.

VI

Upon belief, all fictitious Defendants were residents of the County of Maricopa, State of Arizona; and/or were organized and existing under the laws of Arizona and doing business in the State of Arizona; and/or were foreign corporations, businesses, etc., qualified to do business within the State of Arizona, and actually doing business therein on the date of the accident alleged herein.

VII

All acts and events alleged hereafter occurred within the County of Maricopa, State of Arizona.

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VIII

The minimum jurisdictional amount for filing this action has been satisfied. This Court has jurisdiction and venue is proper.

COUNT ONE: NEGLIGENCE

IX

Plaintiff re-alleges and incorporates paragraphs 1-8 above as if fully set forth herein.

X

On March 16, 2008, at East Moreland and North 1st Street in Phoenix, Arizona, Plaintiff was riding his bicycle northbound in the pedestrian ramp entering Margaret T. Hance Park. At the same time and place, Defendant Terrence Necessary was driving a Jeep westbound on the south part of the pedestrian walkway in Margaret T. Hance Park, when he collided with Plaintiff.

COUNT TWO: NEGLIGENCE PER SE

XI

Plaintiff re-alleges and incorporates paragraphs 1-10 above as if fully set forth herein.

XII

Defendant Terrence Necessary was using the walkway which is not intended for vehicles and is negligent per se.

COUNT THREE - VICARIOUS LIABILITY

XIII

Plaintiff re-alleges and incorporates paragraphs 1-12 above as if fully set forth herein.

XIV

At all time relevant to this Complaint, Defendant Terrence Necessary was acting as an agent, servant or employee within the scope of his employment on behalf of Defendant Coalfield Services, Inc. and therefore, Defendant Coalfield Services, Inc. should be held liable

1 to Plaintiff for the actions of Terrence Necessary on the theory of respondeat superior, agency,
2 equitable estoppel, or other applicable law.

3 **XV**

4 Defendant Coalfield Services, Inc. is vicariously liable to Plaintiff for all injuries and
5 other damages caused by Defendant Terrence Necessary.

6 **DAMAGES**

7 **XVI**

8 Plaintiff re-alleges and incorporates paragraphs 1-15 above as if fully set forth herein.

9 **XVII**

10 As a direct and proximate result of the negligent, reckless, and careless conduct of
11 Defendants, Plaintiff suffered severe injuries which caused him pain, suffering, distress, mental
12 and emotional anguish and anxiety, and a general decrease in his quality and enjoyment of life,
13 all in an amount to be proven at trial.

14 **XVIII**

15 As a further direct and proximate result of the negligent, reckless, and careless conduct
16 of Defendants, Plaintiff incurred expenses for medical care, and may incur expenses for future
17 medical care, all in an amount to be proven at trial.

18 **XIX**

19 As a further direct and proximate result of the negligent, reckless, and careless conduct
20 of Defendants, Plaintiff has or may have suffered lost earnings and may suffer future lost
21 earnings and/or diminished earning capacity.

22 **XX**

23 As a further direct and proximate result of the negligent, reckless and careless conduct
24 of Defendants, Plaintiff has or may have suffered damage to his bicycle or other personal
25 property, and is or may be entitled to compensation for repair or replacement of the bicycle or

1 other property, for such property's accelerated depreciation, and for the loss of its use until it
2 was/is repaired or replaced, all in an amount to be proven at trial.

3
4 WHEREFORE, Plaintiff prays for judgment against Defendants, and each other
5 defendant named herein, jointly and severally, as follows:

6 a. General damages with interest at the highest lawful rate from date of loss or
7 date of the judgment, whichever is sooner until paid in full;

8 b. Special damages with interest at the highest lawful rate from date of loss or
9 date of the judgment, whichever is sooner until paid in full;

10 c. Court costs with interest at the highest lawful rate from date of loss or date
11 of the judgment, whichever is sooner until paid in full;

12 d. For damage and/or loss of use of property;

13 e. For interest accruing on all damages until paid; and

14 f. Such other relief as the Court deems proper.

15 **JURY DEMAND**

16 Plaintiff requests a trial by jury.

17 DATED this 21 day of November, 2008.

18 PHILLIPS & ASSOCIATES

19
20 By

21 John A. Schill, Esq.
22 Attorney for Plaintiff
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Attorney for Plaintiff

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Case No.: **CV2008-029775**

SUMMONS

Tort – Motor Vehicle

IF YOU WANT THE ADVICE OF A
LAWYER, YOU MAY WISH TO CONTACT
THE LAWYER REFERRAL SERVICE AT
602-257-4434 OR ON-LINE AT
WWW.LAWYERFINDERS.ORG. LRS IS
SPONSORED BY THE MARICOPA
COUNTY BAR ASSOCIATION

STATE OF ARIZONA TO THE DEFENDANTS:

TERENCE NECESSARY AND JANE DOE NECESSARY

YOU ARE HEREBY SUMMONED and required to appear and defend, within the time applicable, in this action in this Court. If served within Arizona, you shall appear and defend within twenty (20) days after the service of the Summons and Complaint upon you, exclusive of the day of service. If served outside of the State of Arizona – whether by direct service, or by publication – you shall appear and defend within thirty (30) days after the service of the Summons and Complaint upon you is complete, exclusive of the day of service. Service by publication is complete thirty (30) days after the date of first publication. Direct service is complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete thirty (30) days after filing the Affidavit of Compliance and return receipt or Officer's Return. Where process is served upon the Arizona Director of Insurance as an insurer's attorney to receive service of legal process against it in this State, the insurer shall not be required to appear, answer or otherwise plead until the expiration of forty (40) days after the date of service upon the Director. A.R.S. §§ 20-222, 28-1027.

YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend within the time applicable, judgment by default may be rendered against you for the relief demanded in the Complaint.

1 YOU ARE CAUTIONED that in order to appear and defend, you must file an answer or
2 other proper response in writing with the Clerk of the Court, accompanied by the necessary
3 filing fee, within the time required, and you are required to serve a copy of any answer or other
4 response upon the plaintiff's attorney.

5 The name and address of the plaintiff's attorney is:

6 John A. Schill
7 PHILLIPS & ASSOCIATES
8 3030 North Third Street, Suite 1100
9 Phoenix, Arizona 85012

10 Requests for reasonable accommodations for persons with disabilities must be made to
11 the division assigned to the case by parties at least three (3) judicial days in advance of a
12 scheduled court proceeding.

13 SIGNED AND SEALED: _____

14 MICHAEL K. JEANES
15 Clerk of the Superior Court

COPY
NOV 24 2008

16 By _____

17 Deputy Clerk



18 MICHAEL K. JEANES, CLERK
19 E. PEREZ
20 DEPUTY CLERK

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1 Carl F. Mariano, SB# 010994
2 Felice Guerrieri, State Bar No. 021107
3 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
4 Phoenix Plaza Tower II
5 2929 North Central Avenue, Suite 1700
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7 Telephone: 602.385.1040
8 Facsimile: 602.385.1051
9 Attorneys for Defendants

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PARTNERSHIPS I-X

Defendants.

No. CV2008-029775

NOTICE OF REMOVAL

(Assigned to the Honorable J. Kenneth
Mangum)

NOTICE is hereby given that Defendants have filed a Notice of Removal of Action, in the
United States District Court, District of Arizona, on this date. A copy of the Notice of Removal is
attached.

RESPECTFULLY SUBMITTED this 31 day of December, 2008.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By



Carl F. Mariano
Felice F. Guerrieri
Attorneys for Defendants

LEWIS BRISBOIS BISGAARD & SMITH LLP

1 ORIGINAL of the foregoing filed this
2 31st day of December, 2008, to:

3 Clerk, Maricopa County Superior Court
4 201 West Jefferson
Phoenix, Arizona 85003

5 COPY of the foregoing mailed/faxed this
6 31st day of December, 2008, to:

7 Honorable J. Kenneth Mangum
8 201 West Jefferson
Phoenix, Arizona 85003

9 John A. Schill, Esq.
10 PHILLIPS & ASSOCIATES
3030 North Third Street, Suite 1100
Phoenix, Arizona 85012
Attorneys for Plaintiff

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12 Terri Crawford
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